

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995) (FCC Triennial Review Nine-Month Phase)

**ASSIGNED COMMISSIONER'S RULING
SUSPENDING PROCEEDINGS**

Effective October 2, 2003, the Federal Communications Commission (FCC) Triennial Review Order (TRO) became effective. In accordance with the mandates set forth in the TRO, a separate phase of our Local Competition docket was initiated to conduct the state-mandated proceedings in what has been identified as the "nine-month phase." Because the Commission's authority to promulgate rules in this area is delimited by the concurrent authority of the FCC, these proceedings can only go forward to a meaningful result when there is a clear and shared understanding of the relative responsibilities of state and federal regulators. That issue has been the subject of rulemaking by, and litigation with, the FCC. Of particular relevance to this ruling is the recent decision of the D.C. Circuit in *United States Telecom Assoc. v. FCC*, 359 F. 3d 554 (D. C. Cir. 2004) ("*USTA II*").

On March 2, 2004, the D. C. Circuit decided *USTA II*. The Court affirmed in part and vacated in part the FCC's rules in its TRO") effective October 2, 2003. In particular, the D. C. Circuit held that the FCC's delegation of authority to state

commissions to make impairment findings under section 251(d)(2) of the Federal Communications Act was unlawful. Separately, the Court ruled that the FCC's national findings of impairment for certain unbundled network elements (UNEs) were improper and vacated the FCC's rules requiring unbundled access to mass market switching and high capacity dedicated interoffice and loop transport.

The D.C. Circuit stayed its mandate on its own motion for an initial period of 45 days and an additional period of 45 days at the request of the FCC. The purpose of the stay was to give affected parties an opportunity to negotiate commercial agreements to replace the vacated UNEs.

On June 15, 2004 the stay expired and on June 16, 2004 the District Court's *vacatur* order became effective. Prior to the effective date, both the FCC and the Department of Justice announced that they would not appeal *USTA II*. On June 14, 2004, Chairman Powell of the FCC issued a statement that the Commission would strive to adopt interim rules in the near future, and a final order on local telephone competition rules as soon as possible thereafter.

In view of the Court's determination that the FCC's delegation to state commissions of authority to make impairment findings was improper and taking into account the expressed determination of the FCC to create local competition rules consistent with *USTA II* as soon as possible, I am suspending TRO proceedings, and setting aside submission, until such time as the FCC has issued new or interim local competition rules.¹ The assigned ALJ has developed

¹ The suspension and setting aside of submission applies expressly to deliberations relating to issuance of a Commission order required under the "nine-month" phase of the TRO. Other aspects of the Local Competition docket are not affected by this ruling. Moreover, a separate ruling is still pending on the motion filed June 8, 2004, by the Competitive Carrier Coalition and CalTel, regarding the incumbents' obligations to

Footnote continued on next page

a large record concerning the extent of facilities-based deployment by competitive local exchange carriers (CLECs) in California within the scope of issues to be addressed in the TRO. Briefs have been filed and the record has been submitted. Under Public Utilities Code Section 311(d), the assigned ALJ is to submit a proposed decision within 90 days after a matter has been submitted. Since I am setting aside submission of this proceeding, the requirements for issuance of a proposed decision under Section 311(d) are not activated. Nonetheless, this record shall remain available for consideration by the Commission upon the resumption of these proceedings.

Therefore, **IT IS RULED** that these proceedings, as defined above relating to the TRO, are suspended until such time as the FCC has issued revised local competition rules in compliance with the District Court's decision in *USTA II*.

Dated June 18, 2004, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

continue offering UNEs. This suspension does not prejudice nor dispose of Commission action in response to that motion.

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Suspending Proceedings on all parties of record in this proceeding or their attorneys of record.

Dated June 18, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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